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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
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| 10/756,869  | 01/14/2004  | Richard J. Denatale  | 2300.0000600<br>AUS920031013U | 3402             |
| 46290   | 7590        | 04/09/2008           |                               | EXAMINER         |
| WILLIAMS, MORGAN & AMERSON<br>10333 RICHMOND, SUITE 1100<br>HOUSTON, TX 77042 |             |                      |                               | NGUYEN, QUYNH H  |
|   |             |                      | ART UNIT                      | PAPER NUMBER     |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |
|------------------------------|--------------------------------------|---|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/756,869 | <b>Applicant(s)</b><br>DENATALE, RICHARD J. |
|                              | <b>Examiner</b><br>QUYNH H. NGUYEN   | <b>Art Unit</b><br>2614                     |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 January 2004.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-27 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application<br>Paper No(s)/Mail Date _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____   |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 5-6, 14-16, 18-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Huang et al. (U.S. 20050033571).

As to claims 1 and 21, Huang et al. teaches a user interface for an electronic device comprising: a sensor capable of sensing a physical movement of a user associated with an oral communication and generating an indication thereof (paragraphs [0008] - [0011], [0022]); and an interface through which the sensor can provide the indication to the electronic device thereof (paragraphs [0024], [0026], [0031]).

As to claims 2, 15, and 24, Huang et al. teaches means for positioning the sensor to sense the physical movement (paragraph [0011]).

As to claims 3 and 16, Huang et al. teaches a microphone (Figs. 7, 8 &10, *microphone*) capable of receiving the oral communication from the user (paragraph [0053]).

As to claims 5 and 18, Huang et al. teaches the user interface includes a connector (Fig. 1 not explicitly shown).

As to claims 6 and 19, Huang et al. teaches transmitting over a wireless communications link (paragraph [0027]).

Claim 14 is rejected for the same reasons as discussed above with respect to claim 1. Furthermore, Huang et al. teaches an electronic device (Fig. 1, *computer 110*; [0024]).

As to claim 20, Huang et al. teaches the electronic device comprises a computing apparatus of a mobile phone ([0024]).

As to claim 22, Huang et al. teaches receiving the oral communication ([0008], [0022]); invoking a voice-based capability ([0045], [0046], [0049]); and processing the received oral communication response to sensing the initiation thereof ([0008], [0022], [0045], [0046], [0049]).

As to claim 23, Huang et al. teaches initiating an oral communication with the electronic device ([0031]).

As to claim 25, Huang et al. teaches sensing the electrical activity of the musculature effecting the physical movement ([0008], [0011]).

As to claim 26, Huang et al. teaches indicating to the electronic device includes generating an electrical signal ([0031]).

As to claim 27, Huang et al. teaches indicating to the electronic device includes conditioning the electrical signal (Fig. 1; [0032] - [0033] - *where Huang discussed networking environments that include other networks intranets and the Internet;*

*establishing communications link between computers; hence it is necessary to condition the signal for compatibility with the input/output protocol employed by different computers and different networks).*

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 9, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al. (U.S 20050033571) in view of Rigaux et al. (US 6,324,432).

As to claims 4, 9, and 17, Huang et al. does not teach the sensor comprises an electromyographic sensor.

Rigaux et al. teaches the sensor comprises an electromyographic sensor (col. 2, lines 11-18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Rigaux into the teachings of Huang for the purpose of sufficient detecting the muscle activities, as discussed by Rigaux (col. 2, lines 8-12).

5. Claims 7-8, 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al. (U.S 20050033571).

As to claims 7-8, Huang et al. teaches a microphone (Fig. 8, *microphone 456*); a sensor capable of sensing a physical movement associated with an oral communication and generating an indication thereof (paragraphs [0008] - [0011], [0022]); positioning to locate the sensor to sense the physical movement (paragraphs [0011], [0055]); and an interface through which the sensor can provide the indication to the electronic device thereof (paragraphs [0024], [0026], [0031]).

Huang et al. further teaches a headset (Fig. 8, 450) that includes a head mount 451 with earphones and sensor (bone sensitive microphone 458) instead of a base that a microphone and sensor associated with the base, and microphone and headset are available in a variety of shapes and sizes (paragraph [0055]). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that one would choose a headset that includes a head mount with earphones and sensor or a headset that having an earpiece and a base which a microphone and sensor are associated with, the latter one is the preferred one in the instant application.

Claims 10, 11 are rejected for the same reasons as discussed above with respect to claims 5 and 6, respectively.

As to claims 12-13, Huang et al. teaches a headset further comprising a speaker and a headband (Fig. 8, head mount 451) (paragraph [0055]).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dooley et al. (US 6,733,360) teaches toy device responsive to visual input.

Gable et al. (2007/0100608) teaches speaker verification system using acoustic data and non-acoustic data.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quynh H. Nguyen whose telephone number is 571-272-7489. The examiner can normally be reached on Monday - Thursday from 6:30 A.M. to 5:00 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 571-272-7488. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Quynh H Nguyen/  
Primary Examiner, Art Unit 2614